

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
February 3, 2005

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Ranking, Member Senate Judiciary Committee
Executive Business Meeting
Class Action Fairness Act, S. 5
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This morning we are considering the first of several bills advanced by corporate special interests to dramatically limit the public's access to their courts. I must oppose the so-called "Class Action Fairness Act" for the simple reason that it is NOT fair.

This legislation would make it harder for American citizens to protect themselves against violations of state civil rights, consumer, health, and environmental protection laws by forcing these cases out of their local state courts. Aside from being convenient, state courts have experience with the legal and factual issues involved in these important cases. Legislation sweeping these cases into federal courts simply erects new barriers to lawsuits and puts new burdens on plaintiffs.

In the case of the legal rights that it would take from the citizens of my own state, for example, this legislation would deprive Vermonters of the right to band together to seek relief in their state courts -- even if the principal defendant has a substantial presence in Vermont and the harm occurred in Vermont. This is a high-handed override of the rights of the American people, intending to benefit wealthy and powerful special interests, and it is unacceptable to me.

I want to recognize the sincere efforts made on the class action issue by Senator Kohl, Senator Feinstein, Senator Schumer and others. While I may disagree with them about the nature of the problem and the appropriate solution in this area, I do so respectfully.

In the last Congress, they were able to negotiate some procedural improvements and to rein in some of the worst aspects of previous class action bills. One improvement, for example, restricts the use of worthless coupon settlements. I strongly support this targeted provision to go after a real class action abuse.

Unfortunately, other aspects of the so-called compromise fail to achieve their intended goals. For example, one provision seeks to reduce the delay plaintiffs can experience when a case is removed to federal court by setting a time limit for appeals of remand orders. However, no measure is included in the bill that would set a timeline for the district court to rule on the actual remand motion. This means that plaintiffs' claims may be plucked from state court, just to languish on the federal docket for years, without any recourse. I understand Senator Feingold intends to offer an amendment to set a reasonable time limit for the district court to rule on remand orders. We should all embrace this common-sense improvement.

I am also concerned that this bill will deny justice to consumers and others in class actions involving multiple state laws. The recent trend in the federal courts is not to certify class actions if multi-state laws are involved, and this bill therefore could force nationwide class actions into federal court, where they will be dismissed for involving too many state laws. Senator Bingaman has an amendment to solve this problem, and I look forward to that debate on the Senate floor.

This legislation covers more than just class actions. Individual personal injury actions, consolidated by state courts for efficiency purposes, are not class actions. Despite the fact that a similar provision was unanimously struck from the bill during the last mark-up of class actions legislation in the Judiciary Committee, mass torts are now, for some reason, again included in this bill. Federalizing these individual cases would delay, and possibly deny, justice for victims suffering real physical injuries - such as the people injured by taking Vioxx.

Some special interest groups are distorting the state of class action litigation by relying on a few anecdotes in an ends-oriented attempt to impede plaintiffs from bringing class action cases. We should take steps to correct actual problems in class action litigation. Simply transferring most suits into federal court will not correct the real problems faced by plaintiffs and defendants.

Class actions allow our citizens to band together, afford a competent lawyer and redress wrongdoing. Whether those regular citizens are getting together to force manufacturers to recall and correct dangerous products, to clean up after devastating environmental harms that endanger their families and threaten their communities, or to vindicate the basic civil rights to which they are entitled, they are using class actions. We should not try to make it more difficult or costly for them to right those wrongs.

As The New York Times noted in its editorial yesterday opposing this bill, the real objective of this legislation is "to dilute the impact of strong state laws protecting consumers and the environment and to make it harder for Americans to win redress in court when harmed by bad corporate behavior." I ask unanimous consent that the editorial be included in the Record

The so-called Class Action Fairness Act falls short of the expectation set by its title. It will leave many injured parties who have valid claims with no avenue for relief, and that is anything but fair to the ordinary Americans who look to us to represent them in the U.S. Senate.